



Jurisprudence of Islam

Abu Hayyan Saeed

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A Critical Review on Fiqh and Aql ..

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“Extraordinary intelligence and comprehensive knowledge of Social and Scientific sense of circumstances of his era is a must for a Jurist ..”

People said the Quran has its own theory of life but I always said that the Quran e Kareem invites human beings for practical but not only theories.

The majority of Muslims consider the primary sources of Islamic law known as “ Fiqah or Fiqh ” are the Holy Book (The Quran), The Sunnah (the traditions or known practices of the Holy Prophet PBUH), Ijma' (Consensus), and Qiyas (Analogy).

I want to discuss the inter-link between “ Fiqh and Aql” in the light of the teachings of Al-Quran e Kareem.

The Arabic word "Fiqah" is an ocean of understanding. The term "jurisprudence" means "to understand" , " human understanding of divine Islamic teachings as well as Laws " etc. Al-Quran e Kareem demands “Use of Intellect (Aql) to understand the teachings of Al-Quran e Kareem”. It occurs almost 20 times in six different variations in various verses of the Holy Quran.

The word "Aql" is another ocean of understanding. The term "Aql " means intellect and is mentioned in Al-Quran e Kareem Quran 49 times in verb form derived from the root words. There are found in the five forms of verb which are ya'qilun, ta'qilun, 'aqalu, ya'qiluha and na'qilu referring to the 'use of intellect'.

In the Holy Quran, the authority of intellect has been indicated at about seventy places, that is, intellect has been described as the criterion for judging truth and falsehood, truth and falsehood, and right and wrong. The substance of intellect has been used forty times in the Holy Qur'an. In the Holy Qur'an, the substance of "FIQH" "فقه" has also been used, which gives the meaning of thinking and understanding. Eighteen times in the Holy Quran, the word "thought" "فكر" is used. The substance and the word "Tadbar" "تدبر" in the meaning of "thought" has also appeared four times in the Holy Qur'an.

This is mention of those verses in which the words and materials of intellect, thought, wisdom and understanding are used directly, but if we start studying the Holy Qur'an with open eyes, we will see that it constantly addresses the human intellect, directly or indirectly as well as Human nature calls for awakening.

The term ***jurisprudence*** generally means "to understand" or "to study", so verse 122 of Surah al-Taubah is talking about studying all aspects of religion, i.e. Islam, including but not limited to Islamic law. do not have. Jurisprudence as used in verse 122 of Surah Al-Taubah means the study of the faith presented by the Qur'an, the true historical events contained in it, various natural events in it, the law, the Prophet's life, the guidance of the development by Allah, how did to establish a new religion for the first generation of Muslims and to ensure its eternity, how Islamic teachings relate to time and space, how to present Islam to different peoples and cultures.

Muslim scholars of jurisprudence have been responsible for much elaboration of the "ifs and buts" in Islamic law, and these meaningless "ifs and buts" elaborations reflect a misunderstanding of the purpose of Islamic law and its role in religion. Islamic law is very important, but Islam is much bigger than its legal system. Similarly, a student of Islamic jurisprudence should study all aspects of the religion and not just its legal system.

But the reality is that we have lost contact with the essence and spirit of Islam described by Al-Quran e Kareem and have been engaged in superficial issues for centuries. We have left the heart to the body, the brain to the sectarians and thoughts to the ancient lifeless, baseless, meaningless teachings and the eternal religion to the understanding of our ancestors more than a thousand years ago.

Over the centuries, 99% of the questions and problems discussed in the books of Islamic jurisprudence are hypotheses and their answers are only mental indulgences, they have no relation to reality. This practice of mental debauchery is becoming very slow now.

The Egyptian Scholar Shaikh Muhammad al-Ghazali (1917-1996) said that the term fiqh has been hijacked by the jurists and they gave it a limited legal meaning. He has rightly criticized the overemphasis that old and modern Muslim jurists have been preferred legalistic side of Islam at of its other, broader aspects:

he further said

"If we look at the fiqh of public relations and worshiping practices, I am not aware of any nation that spent more time on juristic branches than our nation. Take ablution for instance. It can be learned in two minutes, so what makes it the subject of hundreds of pages, books, and even tomes, and doctrinal differences? This is puzzling.

He goes on to say:

Instead of learning ablution in three months, it would have been better to study: Why did [the people of] 'Aad expire? Why did [the people of] Thamud perish? Does society today resemble that of 'Aad or Thamud or not? What corruption took place among the Children of Israel?.... All this is possible to learn by studying the Qur'an's narratives, but we ignored it completely and distanced ourselves from it as we distanced ourselves from studying the verses that command us to study the universe.

(Ghazali, M. (2005). *Kayfa Nata'amal ma'a al-Qur'an (how we should deal with the Qur'an)*, Nahdat Misr, Cairo, p. 156). كيف نتعامل مع القرآن .. محمد الغزالي

The drama of the implementation of Islamic system of psychos and sectarians....

In 1948, the Government of Pakistan asked for suggestions to outline the Islamic system. Many people gave their suggestions in this regard. The mention of two of them will not be without interest, which will give an idea of what kind of concern people have had about the Islamic system and how they have been looking at the issue of Sharia enforcement.

In one sketch it was suggested that the way to implement a system of Islamic government is to survey as many mosques associated with a particular jurisprudence as possible and compile a list of them all. After the compilation of this list, the khutbahs and imams of these mosques and the heads of the religious schools established in these mosques should be invited to select the most pious and knowledgeable person among them and when that person is selected. If so, all the imams and preachers should pledge allegiance to this person as Amir al-Mu'minin or Caliph of the Muslims. After the pledge of allegiance, the system of Pakistan should be entrusted to this personality and then the whole work should be done by him. Whatever system of government that personality will run, it will be the Islamic system of government and the implementation of its instructions and orders will be considered as the implementation of Sharia. It is obvious that this form of implementation of the Sharia was not possible in Pakistan

in 1948, it is not possible today and it will not be possible in the future, nor is the implementation of the Sharia. should be handed over to them.

According to another outline, the government of Pakistan should appoint a prominent and well-known scholar of such and such a religion to the post of Shaykh-ul-Islam, he should run the system of Shaykh-ul-Islam mosques, hear, marriage and divorce cases. When this happens, Shariat Islam will be implemented in Pakistan.

If the establishment of the Islamic system means that a famous scholar called Shaykh al-Islam runs the system of mosques and decides the cases of marriage and divorce that come to him, then today's Russia should also be considered as an Islamic state. Yes, because the position of Shaykh al-Islam also exists there, the system of mosques is also entrusted to Shaykh al-Islam, and those who bring marriage and divorce cases to Shaykh al-Islam, he also decides them. According to this meaning, many countries today can be called Islamic countries. But no scholar and visionary will agree with this, nor is this the meaning of the Islamic system.

From these two examples, it can be estimated what were the ideas about the Islamic system in the minds of some psycho experts of Jurisprudence in the early days of Pakistan.

Influence of French Law on Arab Scholars :

France has a dual system of laws. One branch of the system is known as droit public, or public law. This branch defines the principles of operation of state and public institutions. The second branch, called droit privé or private law, applies to the private affairs of individuals and private institutions.

In Jamia Azhar (Egypt) about forty years ago, an effort was undertaken to revise various jurisprudence and a large group of experts there compiled

separate collections of jurisprudence based on different School of thoughts in Fiqh. Academically it was a good effort, but it could not be used much in the muslim world and the work could not go beyond becoming a mere ornament to the libraries. Perhaps one of the main reasons for this was that now the era of restriction of religions is gradually ending. Now the public law of the modern Muslim countries cannot be made with the restriction of the limited scope of the school of thoughts.

In jurisprudence too, new trends have arisen and many new topics for research and contemplation have emerged. It seems that the next 50~70 years will prove to be a beacon of modernity for the principles of jurisprudence and the trends that have emerged in the last fifty or sixty years will reach their completion and their final results will be revealed.

Due to the influence of modern western principles of law, many contemporary scholars have started to formulate the subjects of principles of Islamic jurisprudence in a new way.

There are two major trends in this reorganization. A trend found in the Arab world is to codify jurisprudential topics in the order of the French legal system. France has a dual system of laws. One branch of the system is known as droit public, or public law. This branch defines the principles of operation of state and public institutions. The second branch, called droit privé or private law, applies to the private affairs of individuals and private institutions. Among the early and leading representatives of this trend, the names of well-known Mustafa Zarqa, Sobhi Mohmsani and Salam Madkour etc. are prominent. The original and basic education of most of these gentlemen was Islamic sciences and especially Islamic jurisprudence, which they had read and understood from the main sources and sources of Islam and Islamic jurisprudence from the best teachers of Islamic jurisprudence. Later, these gentlemen received higher education in French language and law in French schools and wrote articles on various aspects and concepts of Islamic law in the universities there and thus learned to present the topics of Islamic jurisprudence in French style.

This trend started in the early 20th century, but the real progress took place in the middle of the 20th century. This was the period when a large number of students from Syria, Egypt and Algeria and Morocco went to France and

obtained higher degrees in law in the universities there. Among the books that were written on the principles of jurisprudence in this manner, "Al-Fiqah al-Islami fi Thawbah al-Jadeed" by Mustafa Ahmad Zarqa has a prominent place. In this book, Professor Mustafa Ahmed Zarqa has compiled some important discussions of Usul Fiqh as well as many materials from Islamic jurisprudence that were not traditionally considered to be included in the discussions of Usul Fiqh. It was undoubtedly a great history-making and Ijtihadi work which was done by Mustafa Zarqa and his contemporary scholars with great success and effort. Through deep and critical study of the basic books of jurisprudence, these gentlemen discovered principles and concepts that the predecessors had not felt the need for and they applied these principles and concepts to their ancient traditional style of detail and sub-problems instead of this new style. Presented in context. Scholars such as Mustafa Al-Zarqa, Shaykh Ali Al-Khafif and Abu Zahra compiled the principles of ownership, wealth, possession, right and many other jurisprudential principles and concepts in a new way and added them to the books of jurisprudence, and so many jurists. The debates were rearranged and included in the field of jurisprudence.

The second major trend of this series emerged in the subcontinent where British rule of law and British style ruled. The Muslim scholars here put the discussions of Usul Fiqh in the style of English Usul Law. The prime representative of this trend was Justice Sir Abdul Rahim. His book ***"Principles of Muhammadan Jurisprudence"*** was the first book of its kind in that it explained the discussions of Usul Fiqh in the style of English Usul Law. This book introduced usul-fiqh debates in the English academic and legal circles. From the beginning of the twentieth century, the study of Usul Fiqh also began in the West. Prominent Western scholars like Macdonald, Goldziher and Schacht have studied usul-fiqh from their own perspective and raised many debates and questions that had not been raised by Muslim scholars before. These debates also influenced the research and writing style of modern Islamic scholars by Muslim students in Western universities and they tried to answer these new questions in their own writings. The discussion of the influence of Islamic jurisprudence on Roman law, the problem of consensus if and when it occurs, the problems arising from the implementation of modern legislation and codified rulings are those that many contemporary writers have discussed. are taken up in the texts.

Today, the amount of work that has been done in the Arab world on principles of jurisprudence, both in terms of quantity and quality, is equal to, if not more than, the total work done after the first few centuries (with a few important exceptions). Is. We can define the fourteenth and fifteenth centuries of Hijri as the period of renewal and revival of Islamic jurisprudence without Tamil. Two main features are noticeable in the work that has started in the Arab world since the beginning of the last Hijri century.

The first thing is that the adherence to a fixed and predetermined jurisprudence or doctrinal school of thought has been reduced in the books of modern jurisprudence. There are very few books in which adherence to a particular school of jurisprudence is envisaged. Otherwise, the tendency of most of the writings is to present the views of the scholars as a whole by declaring the entire capital of jurisprudence and principles of jurisprudence to be the common heritage of Muslims, and to present a positive and healthy comparative study between the jurisprudence and principles of jurisprudence. The practice should be promoted. This can be clearly felt in the writings of Ustad Mustafa Zarqa, Ustad Muhammad Abu Zahra, Muhammad Salam Madkoor and Dr. Abdul Razzaq Sanhoury.

Another noteworthy thing, which has been mentioned before, is that many Arab writers of the modern era have tried to critically study various Western concepts and compare the ideas and concepts of Usul Fiqh with Western law. What are the principles of This comparison has cleared away many of the misunderstandings that arose from the writings of some Western writers. For example, some western writers started to say that jurisprudence in general and certain principles of jurisprudence, in particular, are derived from Roman law, and by collecting some partial analogies here and there, some western writers began to write that these things Islamic law entered under the influence of Roman law. Comparative study began to dispel this misconception, and the evolutionary study of the original sources and principles of Islamic law dispelled this impression forever.

Sir Abdul Rahim's book has been mentioned above, which was a book of a unique style that came out at the beginning of the twentieth century. This book for the first time introduced a circle of Western-educated jurists to the discussion of Usul Fiqh. Although Sir Abdul Rahim's book is an English summary of Urdu translations of some textbooks written in Arabic, there was an innovation in its arrangement and the style was also new. This new order and style put Usul-Fiqh in the same order and style as the Western Usul-ul-Law. It was necessary to build more on the new built by Sir Abdul Rahim later and to continue the work in this style, but unfortunately it could not be done and another jurist among the western educated gentlemen did this work. Not interested in advancing.

Even after the formation of Pakistan, no significant progress could be made in the field of Usul Fiqh for a long time and no solid and lasting work was done except for a semi-light textbook. What little work has been done in Pakistan in the last two-and-a-half decades is by the people associated with the International Islamic University Islamabad, Pakistan, especially its sub-department, the Institute of Islamic Research. The efforts of Dr. Kamal Farooqi, Dr. Ahmed Hassan, Dr. Khalid Masood and Prof. Imran Ahsan Niazi among the scholars associated with Islamic Research Institute and International Islamic University are valuable and significant.

In the present era, some very important interpretations of Islamic laws have come out. Allama Yusuf Seja and Prof. Abdul Rahman have shown simple and modern trends of Ilm al-Kalam in the context of Quran understanding. All these writings are very impressive, heart touching, short but editorial style. These are admirable individual efforts and at the same time I believe that the work of these esteemed individuals needs wider publicity.

In history we can find that in the era of Holy Prophet Muhammad SAW , the decisions were taken as this narration of Hadith book Sunan Tirmidhi # 1327 and Sunan Abu Dawud # 3592.

حَدَّثَنَا هَنَّادٌ، حَدَّثَنَا وَكِيعٌ، عَنْ شُعْبَةَ، عَنْ أَبِي عَوْنٍ التَّقْفِيِّ، عَنِ الْحَارِثِ بْنِ عَمْرٍو، عَنْ رَجَالٍ، مِنْ أَصْحَا مُعَاذٍ عَنْ مُعَاذٍ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَعَثَ مُعَاذًا إِلَى الْيَمَنِ فَقَالَ " كَيْفَ تَقْضِي " . فَقَالَ أَقْضِي بِمَا فِي كِتَابِ اللَّهِ . قَالَ " فَإِنْ لَمْ يَكُنْ فِي كِتَابِ اللَّهِ " . قَالَ فَبِسُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ . قَالَ " فَإِنْ لَمْ يَكُنْ فِي سُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " . قَالَ أَجْتَهُدُ رَأْيِي . قَالَ " الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " .

Some men who were companions of Mu'adh narrated from Mu'adh that the Messenger of Allah (ﷺ) sent Mu'adh to Yemen, so he (ﷺ) said: "How will you judge?" He said: "I will judge according to what is in Allah's Book." He said: "If it is not in Allah's Book ?" He said: "Then with the Sunnah of the Messenger of Allah (ﷺ)." He said: "If it is not in the Sunnah of Messenger of Allah (ﷺ)?" He said: "I will give in my view." He said: "All praise is due to Allah, the One Who made the messenger of the Messenger of Allah suitable." Jami` at-Tirmidhi 1327 and Sunan Abu Dawud 3592.

Conclusion : Extraordinary intelligence and comprehensive knowledge of Social and Scientific sense of circumstances of his era is a must for a Muslim Jurist regarding Islamic Jurisprudence.

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